

REMARKS

A translation error in paragraph [0009] of the specification has been corrected. Support for this amendment is found in the original PCT text, which is incorporated by reference at lines 3-4 of paragraph [0001] and in Example 5. Claim 1 is hereby amended to more particularly point out that which applicants regard as their invention by further defining the polyether polyols or polyester polyols, by explicitly reciting that the phosphorus compound is a flameproofing agent, and by reciting that the blowing agent must comprise at least 5% by weight of 1,1,1,2-tetrafluoroethane, 1,1,1,2,3,3,3-heptafluoropropane or 1,1,1,3,3-pentafluoropropane. Support for these amendments is found, inter alia, in paragraphs [0009], [0010] and [0015] of the specification.

The presently claimed invention is a **premix** which **consists essentially of** (1) a polyol selected from a specified group of polyols, (2) 10 to 20 wt-% of a phosphorous compound flameproofing agent, and (3) 4 to 35 wt-% of a binary blowing agent mixture formed of 1,1,1,3,3-pentafluorobutane and at least 5 wt-% 1,1,1,2-tetrafluoroethane, 1,1,1,2,3,3,3-heptafluoropropane or 1,1,1,3,3-pentafluoropropane.

The rejections of claims 1-6 under 35 U.S.C §103 over Kruecke et al. DE 198 22 944 and Kruecke et al. US 6,380,275 (which is the US counterpart of the German reference and claims priority from the German reference) and for obviousness-type double patenting over the claims of Kruecke et al., US 6,380,275 are respectfully traversed. The Kruecke et al. German reference and corresponding US '275 patent disclose and claim blowing agent mixtures and methods of producing foamed resins, but do not disclose or claim a premix. To the contrary, neither the German reference or Kruecke et al. '275 mentions a premix at all, but instead they teach adding the claimed blowing agent mixture to a propolymer [sic prepolymer] of polyol and polyisocyanate or diisocyanate (see column 4, lines 54-56). This is clearly inconsistent with formation of a premix as claimed which excludes the presence of materials such as isocyanates which would materially affect the basic properties of the claimed premix composition.

A premix and a prepolymer are clearly different and should not be confused. The prepolymer necessarily contains the isocyanate which reacts with the polyol; the claimed premixes clearly exclude such materials. Thus, the German reference and Kruecke et al. '275 fail to render the claimed invention obvious. The obviousness-type double patenting rejection over Kruecke et al. '275 must likewise fall with the §103 rejection, since if the entire disclosure fails to render the present invention obvious, then the invention can hardly be considered obvious over the claims alone of the '275 patent.

The rejection of claims 1-6 under 35 U.S.C. §103(a) over Kruecke et al., US 6,080,799 and the obviousness-type double patenting rejection of claims 1-6 over claims of Kruecke et al. '799 in view of Hinz, US 5,552,450 are also respectfully traversed. Example 1 of Kruecke et al., '799 contains in addition to trischloropropyl phosphate, an aromatic brominated polyether polyol, which is itself an outstanding flame retardant (see Kruecke et al. '275, column 3, lines 23-25). Thus Kruecke et al. '799 does not disclose or suggest a premix as claimed in which the sole flameproofing agent is a phosphorus compound. Hinz does not rectify the deficiencies of Kruecke '799. Hinz generally discourages the use of highly fluorinated hydrocarbons (Hinz, column 8, lines 26-30). Hinz also only teaches incorporating assistants and/or additives (e.g., flameproofing agents) **into the reaction mixture** (Hinz, column 9, lines 23-29). Hinz likewise fails to disclose or suggest the use of premixes as claimed. Thus, even when the disclosure of Hinz is combined with Kruecke '799 (or the claims of Kruecke '799) the result would not lead a person skilled in the art to the presently claimed invention. Reconsideration and withdrawal of the rejections are respectfully requested.

Attention is again directed to the Declaration evidence of record which shows that a composition according to the presently claimed invention unexpectedly and surprisingly exhibit an increased flash point. This unexpected and surprising beneficial result is additional evidence of the non-obviousness of the presently claimed invention.


For the foregoing reasons, the invention as presently claimed is respectfully submitted to be patentable, and prompt, favorable action on the application is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned at (202) 624-2845 would be appreciated since this should expedite the examination of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037110.52632US).

Respectfully submitted,

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